

REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

I. Status of the Claims

Claims 1-23 are pending in this application. Claims 2, 3, 5 and 13-22 have been withdrawn from consideration as being directed to a non-elected species or invention. Notwithstanding this fact, Applicant believes that claims 2, 3, 5, 13-16 and 18-19 (directed to non-elected species) will be allowable as being dependent on an allowed claim.

II. Rejection Under 35 U.S.C. §103

The Examiner has finally rejected claims 1, 4, 6-8, 11, 12, 24-26 under 35 U.S.C. §103(a) as being unpatentable over Blaha, United States Patent No. 5,611,165, in view of Eason, United States Patent No. 5,622,314 and Bell, United States Patent No. 5,672,342.

Applicant believes that a final rejection is improper at this juncture of the prosecution, based upon MPEP 706.07, which states that: “[w]hile the rules no longer give to the applicant the right to ‘amend as often as the examiner presents new reference or reasons for rejection,’ present practice does not sanction hasty and ill-considered final rejections.” “Before a final rejection is in order a clear issue should be developed between the examiner and the applicant . . . [s]witching from one subject matter to another in the claims presented by applicant in successive amendments, *or from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter*, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination.”

In the instant application, applicant has maintained the same subject matter in the claims, making amendments in response to the references cited in the original office action. Examiner

has presented entirely new references in rejecting the claims upon entirely separate bases, but maintains a final rejection. Applicant requests reconsideration by the examiner and withdrawal of the final rejection.

Addressing the substantive rejection, applicant claims, as currently pending, require: “a closed container having an odoriferous composition therein, said composition comprising a carrier material and a liquid animal product mixed with said carrier material, said container being formed from a thin sheet material which is pervious to the passage therethrough of gas and impervious to the passage therethrough of liquid.” The specific structure claimed herein includes a particular type of barrier which simultaneously permits the gas to pass and the liquid to be retained in the operative mode. The examiner cites Blaha for the proposition that the closed container described therein is impervious to liquid. Blaha teaches a device having two container sections which are rotatably displaceable therebetween. Rotation of the devices is permitted between an operative mode and a closed or storage mode. More specifically, at col. 3, lines 10-18, Blaha states (in pertinent part): “An O-ring is positioned with a pair of O-ring grooves and formed respectively on [the] top portion and bottom portion. [The] O-ring preferably remains within [a] groove, and seals the connection between the top and bottom portions and when the pod is in the enclosed position shown in Fig. 3. In this closed position, the O-ring insures that the scent which may be place within the pod does not dissipate.” Review of Figure 3 and this text indicates that no passage of either gas or liquid is possible in this closed position. At col. 3, lines 53-58, Blaha states: “As shown in Fig. 5, the pod is in its operative position. Top portion has been unthreaded relative to lower portion. At the same time, the threaded connection between stem and boss is maintained, it is just the top and bottom member and are [sic] slightly spaced. In this position , the pads are exposed to ambient air and the scent will escape.” Review of Figure 5 indicates that no barrier of any type is present between the

carrier material to retain the passage of either liquid or gas. There is therefore no teaching or suggestion in Blaha that any barrier is presented which is simultaneously impervious to liquid and pervious to gas, in either the operative or inoperative modes.

The examiner cites Eason for the disclosure of the use of doe scent and Bell for the use of urine as attractants. No structure is cited for either Eason or Bell in support of the rejection.

No reference has been cited, therefore, which provides a basis for a rejection of the instant claims 1, 7-12 and 24-26 which teaches or suggests, alone or in combination with any other cited reference, the use of a container device for the selective storage and exposure of odiferous compositions which requires this particular combination of properties.

The examiner has further rejected claims 1, 4, 6-8, 11, 12 and 24-26 under 35 U.S.C. §103(a) as being unpatentable over Novotny, United States Patent No. 5,252,326, in view of Warberg, United States Patent No. 6,337,081. Novotny is cited for its teaching of animal liquid being contained in a solid carrier for rodent control, while Warberg provides a particular packaging for such rodent control material. As stated above, the claims require the container device to simultaneously permit the passage of gas and restrain the passage of liquid material contained therein. Novotny discloses the composition of matter which comprises the animal repellent and does not teach or suggest any particular container therefor. Warberg discloses an animal repellent impregnated into a carrier material which is itself contained in a drawstring bag. The bag is made of perforated material or cloth. No teaching or suggestion is made with respect to any particular characteristics of this material or cloth and therefore the cloth must be considered to have the normal characteristics of such perforated material or cloth, i.e, permeable to both gas and liquid. This is supported by the need for a plastic bag and box for storage. See, col. 2, lines 1-7. As with Blaha, Warberg teaches a device which allows the passage of both gas

and liquid when open, or operable, as well as a complete barrier to both liquid and gas in a non-operative mode. No teaching or suggestion is made, therefore, of any type of container or closure which permits the simultaneous passage of gas and restraint of liquid in conjunction with an odiferous material.

CONCLUSION

Based on the foregoing remarks, Applicant respectfully submits that claims 1-16, 18-19, and 24-26 are in condition for allowance.

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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